

UNITED STATES OF AMERICA  
MERIT SYSTEMS PROTECTION BOARD

TERRY M. TALLEY,  
Appellant,

v.

DEPARTMENT OF THE ARMY,  
Agency.

DOCKET NUMBER  
SL03519010380

DATE: SEP 16 1991

Terry M. Talley, St. Louis, Missouri, pro se.

Michal L. Lissek, Esquire, St. Louis, Missouri, for the  
agency.

BEFORE

Daniel R. Levinson, Chairman  
Antonio C. Amador, Vice Chairman  
Jessica L. Parks, Member

OPINION AND ORDER

The appellant has petitioned for review of the January 2, 1991, initial decision that dismissed his appeal for lack of jurisdiction. For the reasons set forth below, we GRANT the appellant's petition, AFFIRM the initial decision as MODIFIED by this Opinion and Order, and still DISMISS this appeal for lack of jurisdiction.

### BACKGROUND

The appellant filed a petition for appeal from the agency's action laterally reassigning him from the position of GS-5, Payroll Clerk, to the position of GS-5, Voucher Examiner. The appellant accepted the agency's offer of reassignment in lieu of being separated through reduction-in-force (RIF) procedures. The administrative judge at the Board's St. Louis Regional Office dismissed the appeal for lack of jurisdiction, finding that: (1) The Board does not have jurisdiction over transfer actions per se, unless the appellant presents sufficient evidence to show that the action was effected through duress, coercion, or misrepresentation; (2) the appellant specifically stated that he was not alleging coercion or duress; and (3) even assuming arguendo that the appellant's submissions could be construed as raising a claim that his reassignment was involuntary, there was insufficient evidence to show that his reassignment was achieved through duress, coercion, or misrepresentation. For these reasons, the administrative judge also found that the appellant was not entitled to the hearing he had requested.

### ANALYSIS

In his petition for review, the appellant contends, inter alia, that the administrative judge erred in construing transfers and reassignments as synonymous. We agree.

"Reassignment" means a change of an employee, while serving continuously within the same agency, from one position

to another without promotion or demotion; while "transfer" means a change of an employee from a position in one agency to a position in another agency. 5 C.F.R. § 210.101(12) and (18). Here, the appellant accepted a reassignment to another position within his agency -- he did not request a transfer to a position in another agency. The administrative judge's failure to recognize this distinction constituted harmless error under the circumstances, however, as it does not alter the outcome of this appeal and does not prejudice the rights of either party. See *Panter v. Department of the Air Force*, 22 M.S.P.R. 281, 282 (1984) (an adjudicatory error that is not prejudicial to a party's substantive rights provides no basis for reversal of an initial decision).

The appellant accepted the agency's offer of reassignment in lieu of separation through RIF procedures. The Board lacks jurisdiction to review an employee's voluntary reassignment or resignation taken to avoid the consequences of an impending RIF. *Williams v. Department of the Army*, 44 M.S.P.R. 449, 451 (1990) (citing *Covington v. Department of Health & Human Services*, 750 F.2d 937, 941 (Fed. Cir. 1984)). Thus, the administrative judge was correct in determining that the Board lacks jurisdiction over this appeal.

In *Koop v. Federal Emergency Management Agency*, 16 M.S.P.R. 605, 607 (1983), the Board held that an employee-initiated action, such as a transfer, is presumed to be voluntary unless the appellant presents sufficient evidence to establish that the action was effected through duress or

coercion, or shows that a reasonable person would have been misled by the agency's statements. However, because a reassignment, as here, or a transfer, as in Koop, whether voluntary or involuntary, is not appealable to the Board, we hereby limit the holding in Koop to such intervening actions over which the Board has jurisdiction.\*

#### ORDER

This is the final order of the Merit Systems Protection Board in this appeal. 5 C.F.R. § 1201.113(c).

#### NOTICE TO APPELLANT

You have the right to request the United States Court of Appeals for the Federal Circuit to review the Board's final decision in your appeal if the court has jurisdiction. See 5 U.S.C. § 7703(a)(1). You must submit your request to the court at the following address:

United States Court of Appeals  
for the Federal Circuit  
717 Madison Place, N.W.  
Washington, DC 20439

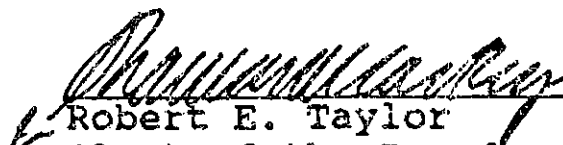
The court must receive your request for review no later than 30 calendar days after receipt of this order by your

---

\* Even if we were to find that the appellant's reassignment was involuntary, the agency nevertheless could reassign the appellant (assuming the agency evinced a legitimate motivation), and that reassignment would not be within our jurisdiction.

representative, if you have one, or receipt by you personally, whichever receipt occurs first. See 5 U.S.C. § 7703(b)(1).

FOR THE BOARD:

  
Robert E. Taylor  
Clerk of the Board

Washington, D.C.